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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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11 BISMARCK LOPEZ-MARTINEZ,) NO. CV 06-1987-CJC (MAN)
12)
13 Petitioner,)
14)
15 v.) ORDER ADOPTING FINDINGS,
16)
17 JOHN DOVEY, WARDEN,) CONCLUSIONS, AND RECOMMENDATIONS
18)
19 Respondent.) OF UNITED STATES MAGISTRATE JUDGE
20)
21 _____)
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25 Pursuant to 28 U.S.C. § 636, the Court has reviewed the Petition
26 for Writ of Habeas Corpus, all of the records herein, the Report and
27 Recommendation of United States Magistrate Judge ("Report"), and
28 Petitioner's Statement of Objection. The Court has conducted a *de novo*
review of those matters to which objections have been stated in writing.
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24 Petitioner has raised in his Objection a new habeas claim, namely,
25 that the evidence was insufficient to support his conviction. A
26 district court has discretion, but is not required, to consider evidence
27 or claims presented for the first time in Objections to a Magistrate
28 Judge's Report and Recommendation. See Brown v. Roe, 279 F.3d 742, 744-

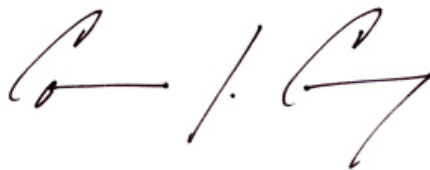
1 45 (9th Cir. 2002); United States v. Howell, 231 F.3d 615, 621-22 (9th
2 Cir. 2000). Petitioner not only failed to plead any sufficiency of the
3 evidence claim in the Petition but also failed to do so in the state
4 courts. Petitioner's sufficiency of the evidence claim set forth in the
5 Objection, thus, is unexhausted. Accordingly, the Court, in its
6 discretion, declines to consider Petitioner's belatedly-raised and
7 unexhausted new claim.

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9 Having completed its *de novo* review, the Court accepts and adopts
10 the Report. IT IS ORDERED that: (1) the Petition is DENIED; and (2)
11 Judgment shall be entered dismissing this action with prejudice.

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13 IT IS FURTHER ORDERED that the Clerk serve copies of this Order and
14 the Judgment herein on Petitioner and counsel for Respondent.

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16 LET JUDGMENT BE ENTERED ACCORDINGLY.

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18 DATED: March 26, 2009.

A handwritten signature in black ink, appearing to read 'C. J. Carney', is written above a horizontal line.

21 CORMAC J. CARNEY
22 UNITED STATES DISTRICT JUDGE
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